IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8356 OF 2005

Shreevallabh R. Modani ....Petitioner
V/s.
M/s.B.J. Scientific Company,
a partnership ....Respondent

Mr.J.G. Damani for the Petitioner.
Mr.Harshad Trivedi for the Respondent.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. By this Petition filed under Article 227 of the Constitution of Indian, the Petitioner takes exception to the order dated 27/28.4.2005 passed in Misc. Application No.40 of 2005 in the Revision Application (Stamp) No.528 of 2005 by the Appellate Bench of the Small Cause Court, Mumbai. By the said order the Petitioner's application for condonation of delay in filing the Revision has been rejected.

3. The brief facts necessary to be cited are stated thus :-

. The Petitioner is the landlord of the property known as Kamdhenu, situated at Popatwadi, Kalbadevi, Mumbai. The Petitioner issued notices to the occupants for payment towards municipal taxes and repair cess. Respondent No.1 was one such occupant to receive the said notice. Respondent No.1 having not complied with the said notice, the Petitioner filed R.A.E. & R. Suit No.157/265 of 2004 for eviction, the Petitioner has also filed an interim notice therein. It appears that the Respondents herein had filed two applications for fixing of standard rent in the said suit. The said applications were rejected. The parties thereafter completed the pleadings but the trial Court proceeded to fix the standard rent by its order dated 16/17.9.2004 which was beyond the scope of the application made by the Petitioner and in fact when the application of the Respondents for fixing the standard rent had been rejected.

. Being aggrieved by the said decision of the learned Judge of the Small Causes Court, Mumbai dated 16/17.9.2004, the Petitioner filed Revision before the Appellate Bench of the Small Causes Court. The said Revision was belated by a period of two months and 19 days. The Petitioner therefore filed an application

for condonation of delay, which was Misc. Application No.40 of 2005. In the said Misc. Notice, the Petitioner contended that on account of indisposition of the Petitioner at the relevant time, the said Revision could not be filed within time and a delay of two months and 19 days had occasioned. The said application of the Petitioner came to be rejected by the Appellate Bench of the Small Causes Court by its order dated 27/28.4.2005. It is the said order which is impugned in the present Petition.

4. I have heard the learned counsel for the respective parties. Mr.Damani, the learned counsel appearing on behalf of the Petitioner contends that the Petitioner has made out good and sufficient cause for condonation of delay, as the Petitioner was indisposed at the relevant time and the Petitioner therefore could not file the Revision within limitation. The learned counsel for the Petitioner further submitted that the Petitioner had produced the documentary evidence in support of his case. Lastly it is submitted that the interest of justice requires that the delay be condoned and the Petitioner be given an opportunity to prosecute the Revision on merits.

5. On the other hand, Mr.Trivedi, the learned

counsel for the Respondents states that the Petitioner has not made out any case for condonation of delay. The Petitioner has also failed to substantiate his case in respect of his indisposition. Mr.Trivedi also submits that in the absence of any evidence produced by the Petitioner, which would amount to sufficient cause, delay ought not to be condoned and the order of the Appellate Bench need not be interfered with.

6. I have given my anxious consideration to the rival contentions. No doubt it is true that the material on the basis of which the Petitioner has tried to substantiate his case for delay condonation has not been accepted.

7. But it is significant to note that the Petitioner is about 62 years old. The Petitioner has also produced medical certificate which the trial Court did not find worthy of acceptance. Be that as it may, the fact remains that there was some material on record and therefore, it cannot be said that there was absolutely no material produced by the Petitioner. It is trite that in matters of condonation of delay a highly technical approach should not be adopted. In that view of the matter, the impugned order dated 27/28.4.2005 passed in Misc.Application No.40 of 2005

would have to be set-aside. The delay in filing the Revision would have to be condoned.

8. However, interest of justice would be served if the costs of Rs.3000/- are directed to be paid by the Petitioner to the Respondents. The Petitioner to pay the said costs within two weeks from date. Only after the Petitioner produces the proof of the payment of costs the Revision to be numbered and proceeded with. In the event the Petitioner fails to pay the said costs as directed above, the Petition to stand dismissed.

9. Rule is accordingly made absolute in the aforesaid terms.

. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court.

(R.M. SAVANT, J)